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15 March 1974

MEMORANDUM FOR: Deputy Director for Intelligence

SUBJECT : The Economic Dimensions of the Law  
of the Sea Economic Review for  
the Undersecretaries Committee

1. The economic dimensions of the Law of the Sea negotiation have been magnified by too little concern for them during the early phases and too much concern for them in the last 9 months. I shall confine my observations to a narrow definition of economic issues. To explore a broader definition leads to political and strategic considerations which will be treated in another paper.

2. There are three principal economic interests in the subject negotiation:

- o The definition of the coastal waters over which a state may exercise jurisdiction,
- o The biological concept of fisheries jurisdiction, and
- o The region of the deepsea bed.

Definition of Coastal Waters

3. The definition of coastal waters will establish both how far the jurisdiction of the state extends to sea and the scope of state jurisdiction in its surrounding waters. Most states seek exclusive jurisdiction over 12 miles from shore subject only to permission for innocent passage of ships complying with the navigation regulations of the coastal state. Most states seek jurisdiction over economic activity whether fishing or mining for a greater distance from the coast, some defining the distance in terms of miles (200 miles is most common) and others in terms of depth (200 meters and 4,000 meters are most common).

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4. The definition sought by participants is a function of their off-shore environment. The US which held out to the bitter end on a 3 mile territorial sea now seeks a mineral domain which extends to the edge of the continental shelf, commonly defined as the ~~4,000~~ 200 meter depth -- a distance which extends in some areas far beyond 200 miles. Coastal states with a deep trough off the coast want a 200 mile domain. Land-locked states want a minimum coastal domain and want to share royalties from all seabed activities. All states want to maximize their control. An acceptable definition will tend to give a broad area to the coastal state yet restrict its jurisdiction to interfere with relative freedom of navigation. Thus the US will probably get a large part of the wide offshore domain it seeks, but it will find that the coastal states will almost certainly be given greater control over navigation than the maritime powers wish them to have, particularly control over naval ships and tankers. Fisheries control will tend to coincide with the mineral domain to simplify problems of enforcement.

#### Biological Concept of Fisheries

5. The US seeks a fisheries domain defined on a biological basis. The definition treats 3 different basic domains. Anadromous fish (salmon) may be controlled only by the states in whose rivers they spawn. Ground fish (cod) may be controlled only by the coastal state off whose shores they are taken. Migratory fish (tuna) may be controlled only by regional international commissions composed of basin states. Finally the US proposes fishing at the maximum sustainable yield which would require the control authority to permit other states to participate in the fishery if the control authority's own fishermen did not take the maximum sustainable yield. The US proposal is the epitome of elegance, but it is difficult for the small states to comprehend and it is difficult for all states to enforce. The combination of factors will probably persuade most of the states to opt for a simple distance-depth domain. This will provide the US a larger fishery than it now has. It will reduce the US role in the migratory catch but greatly increase its catch of ground fish and probably make little difference to the US catch of anadromous species.

#### Control Over the Deep Seabed

6. Control over the deep seabed has posed the greatest dissension among US participants. Originally

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proposed by the US as a sweetener to bring the LDCs to accept free transit, an International Seabed Resource Authority (ISRA) would be created to control the exploitation of the deep seabed as the "common heritage of all mankind." The LDCs have seized the concept, radicalized it to maximize their control and potential income, and now intend to browbeat the US if it refuses to espouse its proposal. The US Delegation has been reluctant to abandon the ISRA in spite of the perversion of the original concept.

7. Most of the US Delegation insists that it will be difficult for the US as its sponsor to eliminate ISRA or to restrict it to a negligible role as a registrant of mining claims and collector of mining royalties. It will be equally, if not more difficult to define a more acceptable (to the LDCs) ISRA with sufficient precision and clarity that the subsequent operation of the authority will not offer the prospect of developing a set of controls that would extract large sums from US exploitation off its continental margin and the deep seabed. This is held out as the alternative to a lesser role.

8. These fears seem inflated. It would seem perfectly plausible for the US to offer a limited ISRA and to insist on disassociating itself from an ISRA which is clearly a power grab by the LDCs. Indeed, a clear definition of coastal state authority to include title to receipts from exploitation of its domain would reduce the residual area subject to ISRA to such a limited set of resources that its income would be minimal in the next decade or two. Such specific restrictions of the deep seabed via the allocation of broad powers to the coastal regime would essentially eliminate any need for an ISRA. This would be particularly difficult for the land-locked and shelf-locked states to accept, however, because their pelf from the negotiation can come only from a share of the revenues of the ISRA.

9. US economic concern has been magnified by resort to "worst case" analyses on many of the issues. Treasury's concern about ISRA turns on (1) its objection to any form of regulation of economic activity -- particularly control over a technology which is unknown, and on (2) its fear that large sums might be transferred from the US to the LDCs. ISRA could well be constituted so that it would regulate entry to the residual deep seabed,

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review the performance of the firms exploiting this domain and collect royalties without in any way intruding on traditional freedom of access. The area is vast, the concerns who can exploit it are few, and future levels of production are highly uncertain. That uncertainty should not lead us to negotiate an ISRA which would become a monster should the deep seabed become an important factor at some future date. The sums which have been suggested, all of which are most tentative, do not exceed \$2 billion per annum in the worst case. Although, this sum is not trivial, it is a negligible portion of US imports, it could be offset against economic aid, and it would imply a level of US activity in the seabed which would generate US exports far in excess of the amount transferred to ISRA.



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